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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JONATHAN JEROZAL and NIKKI GIN, individually and on behalf of all other members of the general public similarly situated,

Plaintiffs,

V.

STRYKER CORPORATION, a
Michigan corporation,

Defendant.

Case No.: 2:22-CV-4094-GW-AFMx

STIPULATED PROTECTIVE ORDER¹

Complaint Filed: June 14, 2022

¹ This Stipulated Protective Order is based substantially on the model protective order provided under Magistrate Judge Alexander F. MacKinnon's Procedures.

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1 1. A. PURPOSES AND LIMITATIONS

2 Discovery in this action is likely to involve production of confidential,
3 proprietary or private information for which special protection from public disclosure
4 and from use for any purpose other than prosecuting this litigation may be warranted.
5 Accordingly, the parties hereby stipulate to and petition the Court to enter the following
6 Stipulated Protective Order. The parties acknowledge that this Order does not confer
7 blanket protections on all disclosures or responses to discovery and that the protection
8 it affords from public disclosure and use extends only to the limited information or items
9 that are entitled to confidential treatment under the applicable legal principles.

10 B. GOOD CAUSE STATEMENT

11 This action is likely to involve trade secrets, customer and pricing lists and other
12 valuable research, development, commercial, financial, technical and/or proprietary
13 information for which special protection from public disclosure and from use for any
14 purpose other than prosecution of this action is warranted. Such confidential and
15 proprietary materials and information consist of, among other things, employee records,
16 employment policies & procedures, training materials, product marketing strategies,
17 technical product descriptions, strategic human resources decisions, vendor contracts
18 and relationships, pay and salary records, information protected by the Health Insurance
19 Portability and Accountability Act (“HIPAA”), other confidential business or financial
20 information, information regarding confidential business practices, or other confidential
21 research, development, or commercial information (including information implicating
22 privacy rights of third parties), information otherwise generally unavailable to the
23 public, information that would, if disclosed, cause competitive disadvantage to
24 Defendant or Defendant’s subsidiaries, or information which may be privileged or
25 otherwise protected from disclosure under state or federal statutes, court rules, case
decisions, or common law. Accordingly, to expedite the flow of information, to
facilitate the prompt resolution of disputes over confidentiality of discovery materials,
to adequately protect information the parties are entitled to keep confidential, to ensure

that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

C. ACKNOWLEDGMENT OF PROCEDURE FOR FILING UNDER
SEAL

The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Local Civil Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

There is a strong presumption that the public has a right of access to judicial proceedings and records in civil cases. In connection with non-dispositive motions, good cause must be shown to support a filing under seal. See *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th Cir. 2002), *Makar-Welbon v. Sony Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis. 1999) (even stipulated protective orders require good cause showing), and a specific showing of good cause or compelling reasons with proper evidentiary support and legal justification, must be made with respect to Protected Material that a party seeks to file under seal. The parties' mere designation of Disclosure or Discovery Material as CONFIDENTIAL does not—without the submission of competent evidence by declaration, establishing that the material sought to be filed under seal qualifies as confidential, privileged, or otherwise protectable—constitute good cause.

Further, if a party requests sealing related to a dispositive motion or trial, then

1 compelling reasons, not only good cause, for the sealing must be shown, and the relief
2 sought shall be narrowly tailored to serve the specific interest to be protected. *See Pintos*
3 *v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir. 2010). For each item or type
4 of information, document, or thing sought to be filed or introduced under seal in
5 connection with a dispositive motion or trial, the party seeking protection must
6 articulate compelling reasons, supported by specific facts and legal justification, for the
7 requested sealing order. Again, competent evidence supporting the application to file
8 documents under seal must be provided by declaration.

9 Any document that is not confidential, privileged, or otherwise protectable in its
10 entirety will not be filed under seal if the confidential portions can be redacted. If
11 documents can be redacted, then a redacted version for public viewing, omitting only
12 the confidential, privileged, or otherwise protectable portions of the document, shall be
13 filed. Any application that seeks to file documents under seal in their entirety should
14 include an explanation of why redaction is not feasible.

15

16 2. DEFINITIONS

17 2.1 Action: This pending lawsuit: *Jerozal, et al. v. Stryker Corporation*, Case
18 No. 2:22-04094-GW-AFM.

19 2.2 Challenging Party: a Party or Non-Party that challenges the designation
20 of information or items under this Order.

21 2.3 "CONFIDENTIAL" Information or Items: information (regardless of how
22 it is generated, stored or maintained) or tangible things that qualify for protection under
23 Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause
24 Statement.

25 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as their
26 support staff).

27 2.5 Designating Party: a Party or Non-Party that designates information or
28 items that it produces in disclosures or in responses to discovery as

1 “CONFIDENTIAL.”

2 2.6 Disclosure or Discovery Material: all items or information, regardless of
3 the medium or manner in which it is generated, stored, or maintained (including, among
4 other things, testimony, transcripts, and tangible things), that are produced or generated
5 in disclosures or responses to discovery in this matter.

6 2.7 Expert: a person with specialized knowledge or experience in a matter
7 pertinent to the litigation who has been retained by a Party or its counsel to serve as an
8 expert witness or as a consultant in this Action.

9 2.8 House Counsel: attorneys who are employees of a party to this Action.
10 House Counsel does not include Outside Counsel of Record or any other outside
11 counsel.

12 2.9 Non-Party: any natural person, partnership, corporation, association or
13 other legal entity not named as a Party to this action.

14 2.10 Outside Counsel of Record: attorneys who are not employees of a party to
15 this Action but are retained to represent or advise a party to this Action and have
16 appeared in this Action on behalf of that party or are affiliated with a law firm that has
17 appeared on behalf of that party, and includes support staff.

18 2.11 Party: any party to this Action, including all of its officers, directors,
19 employees, consultants, retained experts, and Outside Counsel of Record (and their
20 support staffs). For the avoidance of doubt, any class member under Rule 23 or any
21 individual who opts into this action under the provisions of the Fair Labor Standards
22 Act is, for purposes of this Order only, considered a “Party” and therefore subject to
23 and bound by this Agreement in the same manner as all named parties in this Action.

24 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this Action.

26 2.13 Professional Vendors: persons or entities that provide litigation support
27 services (e.g., photocopying, videotaping, translating, preparing exhibits or
28 demonstrations, and organizing, storing, or retrieving data in any form or medium) and

1 their employees and subcontractors.

2 2.14 Protected Material: any Disclosure or Discovery Material that is
3 designated as “CONFIDENTIAL.”

4 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material
5 from a Producing Party.

6
7 3. SCOPE

8 The protections conferred by this Stipulation and Order cover not only Protected
9 Material (as defined above), but also (1) any information copied or extracted from
10 Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected
11 Material; and (3) any testimony, conversations, or presentations by Parties or their
12 Counsel that might reveal Protected Material.

13 Any use of Protected Material at trial shall be governed by the orders of the trial
14 judge. This Order does not govern the use of Protected Material at trial.

15
16 4. DURATION

17 Once a case proceeds to trial, information that was designated as
18 CONFIDENTIAL or maintained pursuant to this protective order used or introduced as
19 an exhibit at trial becomes public and will be presumptively available to all members
20 of the public, including the press, unless compelling reasons supported by specific
21 factual findings to proceed otherwise are made to the trial judge in advance of the trial.
22 *See Kamakana*, 447 F.3d at 1180-81 (distinguishing “good cause” showing for sealing
23 documents produced in discovery from “compelling reasons” standard when merits-
24 related documents are part of court record). Accordingly, the terms of this protective
25 order do not extend beyond the commencement of the trial.

1 5. DESIGNATING PROTECTED MATERIAL2 5.1 Exercise of Restraint and Care in Designating Material for Protection.

3 Each Party or Non-Party that designates information or items for protection under
 4 this Order must take care to limit any such designation to specific material that qualifies
 5 under the appropriate standards. The Designating Party must designate for protection
 6 only those parts of material, documents, items or oral or written communications that
 7 qualify so that other portions of the material, documents, items or communications for
 8 which protection is not warranted are not swept unjustifiably within the ambit of this
 9 Order.

10 Mass, indiscriminate or routinized designations are prohibited. Designations that
 11 are shown to be clearly unjustified or that have been made for an improper purpose
 12 (e.g., to unnecessarily encumber the case development process or to impose
 13 unnecessary expenses and burdens on other parties) may expose the Designating Party
 14 to sanctions.

15 If it comes to a Designating Party's attention that information or items that it
 16 designated for protection do not qualify for protection, that Designating Party must
 17 promptly notify all other Parties that it is withdrawing the inapplicable designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this
 19 Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated
 20 or ordered, Disclosure or Discovery Material that qualifies for protection under this
 21 Order must be clearly so designated before the material is disclosed or produced.

22 Designation in conformity with this Order requires:

23 (a) for information in documentary form (e.g., paper or electronic documents,
 24 but excluding transcripts of depositions or other pretrial or trial proceedings), that the
 25 Producing Party affix at a minimum, the legend "CONFIDENTIAL" (hereinafter
 26 "CONFIDENTIAL legend"), to each page that contains protected material. If only a
 27 portion of the material on a page qualifies for protection, the Producing Party also must
 28 clearly identify the protected portion(s) (e.g., by making appropriate markings in the

1 margins or redacting the confidential information contained within the document).

2 A Party or Non-Party that makes original documents available for inspection
3 need not designate them for protection until after the inspecting Party has indicated
4 which documents it would like copied and produced. During the inspection and before
5 the designation, all of the material made available for inspection shall be deemed
6 “CONFIDENTIAL.” After the inspecting Party has identified the documents it wants
7 copied and produced, the Producing Party must determine which documents, or portions
8 thereof, qualify for protection under this Order. Then, before producing the specified
9 documents, the Producing Party must affix the “CONFIDENTIAL legend” to each page
10 that contains Protected Material. If only a portion of the material on a page qualifies
11 for protection, the Producing Party also must clearly identify the protected portion(s)
12 (e.g., by making appropriate markings in the margins).

13 (b) for testimony given in depositions that the Designating Party identifies the
14 Disclosure or Discovery Material on the record, before the close of the deposition all
15 protected testimony.

16 (c) for information produced in some form other than documentary and for
17 any other tangible items, that the Producing Party affix in a prominent place on the
18 exterior of the container or containers in which the information is stored the legend
19 “CONFIDENTIAL.” If only a portion or portions of the information warrants
20 protection, the Producing Party, to the extent practicable, shall identify the protected
21 portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
23 failure to designate qualified information or items does not, standing alone, waive the
24 Designating Party’s right to secure protection under this Order for such material. Upon
25 timely correction of a designation, the Receiving Party must make reasonable efforts to
26 assure that the material is treated in accordance with the provisions of this Order.

1 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

2 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
3 designation of confidentiality at any time that is consistent with the Court's Scheduling
4 Order.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process under Local Rule 37-1 et seq.

7 6.3 Joint Stipulation. Any challenge submitted to the Court shall be via a joint
8 stipulation pursuant to Local Rule 37-2.

9 6.4 The burden of persuasion in any such challenge proceeding shall be on the
10 Designating Party. Frivolous challenges, and those made for an improper purpose (e.g.,
11 to harass or impose unnecessary expenses and burdens on other parties) may expose the
12 Challenging Party to sanctions. Unless the Designating Party has waived or withdrawn
13 the confidentiality designation, all parties shall continue to afford the material in
14 question the level of protection to which it is entitled under the Producing Party's
15 designation until the Court rules on the challenge.

16

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material that is
19 disclosed or produced by another Party or by a Non-Party in connection with this Action
20 only for prosecuting, defending or attempting to settle this Action. Such Protected
21 Material may be disclosed only to the categories of persons and under the conditions
22 described in this Order. When the Action has been terminated, a Receiving Party must
23 comply with the provisions of section 13 below (FINAL DISPOSITION).

24 Protected Material must be stored and maintained by a Receiving Party at a
25 location and in a secure manner that ensures that access is limited to the persons
26 authorized under this Order.

27 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
28 ordered by the court or permitted in writing by the Designating Party, a Receiving Party

may disclose any information or item designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional

Vendors to whom disclosure is reasonably necessary for this Action and signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit 1 hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
2 OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that
4 compels disclosure of any information or items designated in this Action as
5 “CONFIDENTIAL,” that Party must:

6 (a) promptly notify in writing the Designating Party. Such notification
7 shall include a copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order
9 to issue in the other litigation that some or all of the material covered by the
10 subpoena or order is subject to this Protective Order. Such notification shall
11 include a copy of this Stipulated Protective Order; and

12 (c) cooperate with respect to all reasonable procedures sought to be pursued
13 by the Designating Party whose Protected Material may be affected.

14 If the Designating Party timely seeks a protective order, the Party served with the
15 subpoena or court order shall not produce any information designated in this action as
16 “CONFIDENTIAL” before a determination by the court from which the subpoena or
17 order issued, unless the Party has obtained the Designating Party’s permission. The
18 Designating Party shall bear the burden and expense of seeking protection in that court
19 of its confidential material and nothing in these provisions should be construed as
20 authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive
21 from another court.

22

23 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED
24 IN THIS LITIGATION

25 (a) The terms of this Order are applicable to information produced by a Non-
26 Party in this Action and designated as “CONFIDENTIAL.” Such information produced
27 by Non-Parties in connection with this litigation is protected by the remedies and relief
28 provided by this Order. Nothing in these provisions should be construed as prohibiting

1 a Non-Party from seeking additional protections.

2 (b) In the event that a Party is required, by a valid discovery request, to
3 produce a Non-Party's confidential information in its possession, and the Party is
4 subject to an agreement with the Non-Party not to produce the Non-Party's confidential
5 information, then the Party shall:

6 (1) promptly notify in writing the Requesting Party and the Non-Party
7 that some or all of the information requested is subject to a confidentiality agreement
8 with a Non-Party;

9 (2) promptly provide the Non-Party with a copy of the Stipulated
10 Protective Order in this Action, the relevant discovery request(s), and a reasonably
11 specific description of the information requested; and

12 (3) make the information requested available for inspection by the Non-
13 Party, if requested.

14 (c) If the Non-Party fails to seek a protective order from this court within 14
15 days of receiving the notice and accompanying information, the Receiving Party may
16 produce the Non-Party's confidential information responsive to the discovery request.
17 If the Non-Party timely seeks a protective order, the Receiving Party shall not produce
18 any information in its possession or control that is subject to the confidentiality
19 agreement with the Non-Party before a determination by the court. Absent a court order
20 to the contrary, the Non-Party shall bear the burden and expense of seeking protection
21 in this court of its Protected Material.

22

23 10. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

24 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
25 Protected Material to any person or in any circumstance not authorized under this
26 Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing
27 the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve
28 all unauthorized copies of the Protected Material, (c) inform the person or persons to

1 whom unauthorized disclosures were made of all the terms of this Order, and (d) request
2 such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
3 that is attached hereto as Exhibit A.

4

5 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**

6 When a Producing Party gives notice to Receiving Parties that certain
7 inadvertently produced material is subject to a claim of privilege or other protection,
8 the obligations of the Receiving Parties are those set forth in Federal Rule of Civil
9 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
10 may be established in an e-discovery order that provides for production without prior
11 privilege review. The parties agree, and this Court orders, that in the event of an
12 inadvertent disclosure, the maximum protections afforded by Federal Rule of Evidence
13 502(d) and (e), shall govern.

14

15 **12. MISCELLANEOUS**

16 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
17 person to seek its modification by the Court in the future.

18 12.2 Right to Assert Other Objections. By stipulating to the entry of this
19 Protective Order, no Party waives any right it otherwise would have to object to
20 disclosing or producing any information or item on any ground not addressed in this
21 Stipulated Protective Order. Similarly, no Party waives any right to object on any
22 ground to use in evidence of any of the material covered by this Protective Order.

23 12.3 Filing Protected Material. A Party that seeks to file under seal any
24 Protected Material must comply with Local Civil Rule 79-5. Protected Material may
25 only be filed under seal pursuant to a court order authorizing the sealing of the specific
26 Protected Material at issue. If a Party’s request to file Protected Material under seal is
27 denied by the court, then the Receiving Party may file the information in the public
28 record unless otherwise instructed by the court.

1 13. FINAL DISPOSITION

2 After the final disposition of this Action, as defined in paragraph 4, within 30
3 days of a written request by the Designating Party, each Receiving Party must return all
4 Protected Material to the Producing Party or destroy such material. As used in this
5 subdivision, “all Protected Material” includes all copies, abstracts, compilations,
6 summaries, and any other format reproducing or capturing any of the Protected
7 Material. Whether the Protected Material is returned or destroyed, the Receiving Party
8 must submit a written certification to the Producing Party (and, if not the same person
9 or entity, to the Designating Party) by the 30 day deadline that (1) identifies (by
10 category, where appropriate) all the Protected Material that was returned or destroyed
11 and (2) affirms that the Receiving Party has not retained any copies, abstracts,
12 compilations, summaries or any other format reproducing or capturing any of the
13 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
14 archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
15 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney
16 work product, and consultant and expert work product, even if such materials contain
17 Protected Material. For documents that contain Protected Material, however, counsel
18 may only keep an archival copy for a period of 12 months after final disposition of this
19 Action. After the expiration of 12 months, counsel must either destroy or return to the
20 Producing Party any such document that contains Protected Material. For the avoidance
21 of doubt, any archival copies that contain or constitute Protected Material remain
22 subject to this Protective Order at all times as set forth in Section 4 (DURATION).

23 ///

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25 ///

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27

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14. **VIOLATION**

2 Any violation of this Order may be punished by appropriate measures including,
3 without limitation, contempt proceedings and/or monetary sanctions.

5 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7 DATED: March 13, 2023

8 /s/ Christopher E. Coleman
9 Attorneys for Plaintiff

11 DATED: March 13, 2023

13 /s/ Kirk A. Hornbeck
14 Attorneys for Defendant

16 **ATTESTATION**

17 I attest that all other signatories listed, and on whose behalf the filing is submitted,
18 concur in the filing's content and have authorized the filing.

20 Date: March 13, 2023

20 By: /s/ Kirk A. Hornbeck

22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

24 DATED: 3/13/2023

25 

26 HON. ALEXANDER F. MacKINNON
27 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Central District of California on [date] in the case of *Jonathan Jerozal et al. v. Stryker Corporation*, Case No. 2:22-cv-04094-GW-AFM. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action. I

hereby appoint _____ [print or type full name] of
_____ [print or type full address and
telephone number] as my California agent for service of process in connection with
this action or any proceedings related to enforcement of this Stipulated Protective
Order.

Date:

City and State where sworn and signed:

Printed name:

Signature: